IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 12902 of 2004

Between:

Prathima Educational Society, rep by Chairman and Managing Director

Shri B. Srinivas Rao

..... PETITIONER

AND

1. The Government of Andhra Pradesh rep by Prl. Secrtary, Health,

Medicaland Family Welfare Department Secretariat, Hyderabad
2 NTR University of Health Sciences, rep by Registrar, Vijayawada
3 Fees Structure Committee rep by Member Secrtary & Principal

Secretary to Govt. Health, Medical and Family Welfare Department, 1st

Floor (South wing) Gagan Vihar, M.J. Road, Hyderabad-500 007

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 3rd respondent in fixing a fee structure upto Rs. 30,000/- for 50% Category-A seats, upto Rs. 1,60,000/- for 25% Category-B seats and upto Rs. 4.00 lakhs for Category "C" seats in the petitioner College, which is a common fee structure or all private unaided medical Colleges in the state and in fixing different fee structure under categories "A" "B" and "C" seats instead of one common fee structure for each institution, as being contrary to the judgments of the Hon'ble Supreme Court, in violation of the principles of natural justice arbitrary and illegal and to consequently direct the 3rd respondent to re-fix the fee structure of the petitioner institution for the academic years 2004-05, 2005-06,& 2006-07 after considering the documents and records submitted by the petitioner institution and after giving it an opportunity of personal hearing.

Counsel for the Petitioner: MR.RAMESH RANGANADHAN

Counsel for the Respondent Nos.1 & 3: GP FOR MEDICAL HEALTH & , FAMIY WELFARE

Counsel for the Respondent No.2: SMT Y. PADMAVATI.

The Court made the following :

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ORDER:-

Heard Sri Ramesh Ranganathan, learned Senior Counsel appearing on behalf of the petitioner, learned Advocate General, appearing on behalf of respondents 1 and 3 and Smt. Y. Padmavathi, learned Standing Counsel appearing for second respondent.

Petitioner herein, which is an educational institution, constituted as a Society, registered under the A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli, filed this writ petition, inter alia, challenging the action of the respondents in determining the fees structure for the academic years 2004-05, 2005-06 and 2006-07 as illegal and bad.

The main grievance of the petitioner is that it has been constituted by the Society under the provisions of A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli in the year 1997 and running various medical courses. On 30-7-2002, the State Government; issued essentiality Certificate for 150 annual intake admissions. Subsequently, the Government of India also issued a letter of permission dated 1-8-

2002 for the academic year 2003-04. For the academic year 2004-05, permission has been renewed with an annual intake admission of 100 as per the Scheme framed under the establishment of Medical College Regulations, 1999. Having regard to the principles laid down by the Apex Court in **T.M.A. PAI FOUNDATIONS VS. STATE OF KARNATAKA** regulating the admissions, including the procedure to be followed by the management, which has been subsequently re-iterated with further directions as per the decision of the Apex Court in **ISLAMIC ACADEMY OF EDUCATION VS. STATE OF KARNATAKA,** where under, it was contemplated to constitute a Committee for the purpose of fixation of fees structure. The State Government appointed Justice R. Bayapu Reddy as Chairman of the said Committee for fixation of fees structure, vide G.O.Ms.No.90 dated 22-12-2003. Accordingly, for the academic year 2004-05, the Committee issued notification dated 2-7-2004, published in Newspapers on 3-7-2004, calling for proposals for fees fixation for undergraduate Medical courses (M.B.B.S). The petitioner immediately on 5-7-2004 submitted its proposal for fixation of one uniform fees structure for its institution for the three academic years 2004-05, 2005-06 and 2006-07. It was further stated that to substantiate their case, the petitioner had submitted the information and the material in support thereof. According to the petitioner, the average expenditure on each student for the three academic years from 2004-05 to 2006-07 was arrived at Rs. 4.50 lakhs per annum per student. Thereafter, the Member Secretary of the Committee, third respondent herein, through letter dated 12-7-2004 informed the petitioner that if they wish to make an oral or personal representation to the Committee, they could do so on 15-7-2004 at 12.30 P.M. in the Office of the Committee at Hyderabad. It is submitted that in fact the said letter was received by the petitioner only on the afternoon of 15-7-2004 and therefore, the petitioner could not possibly be present at Hyderabad at the schedule time. In the meanwhile, second respondent herein had issued a notification dated 10-7-2004 informing that counseling for admission to the seats for the academic year 2004-05 would be held from 17-7-2004 to 25-7-2004. It is submitted that on 15-7-2004, without there being any representation or personal hearing, third respondent herein determined the fees structure and passed orders. Having come to know about the same, the petitioner filed Writ Petition No. 12537 of 2004 on 19-7-2004 challenging the action of third respondent in not providing the opportunity. However, the said writ petition has been withdrawn with a liberty to the petitioner to file fresh writ petition as per the order dated 21-7-2004 in view of the fact that the petitioner was informed that a decision

with regard to fees structure had already been taken on 15-7-2004. Thereafter, the other institutions have filed review and accordingly, the very same Committee, third respondent herein, had fixed the date as 29-7-2004 for further hearing by giving due notices to them. However, the petitioner was not provided with any opportunity nor any notice was given for hearing to be held on 29-7-2004 on review. After hearing the other institutions, third respondent has confirmed the earlier decision dated 15-7-2004, where under the fees structure was fixed in three different categories i.e., A, B.C fixing the fees at Rs. 30,000/- for category A, Rs, 1,60,000/- for category B and Rs. 4,00,000/- for category C seats respectively. This writ petition has been filed on 22-7-2004 challenging the decision of third respondent- committee dated 15-7-2004.

Learned Counsel appearing on behalf of the petitioner Sri Ramesh Ranganathan, apart from canvassing various aspects on merits, submitted that though notice of hearing was given to all the other institutions, including the petitioner, the same was not served on the petitioner in time and the petitioner was not heard. Therefore, there was no personal hearing given to the petitioner. It is submitted that in pursuance of the representation made on either of the dates 15-7-2004 and 29-7-2004, the petitioner was not heard.

Learned Advocate General appearing on behalf of first respondent submitted that apart from the other institutions who have appeared on 15-7-2004, the Association of such institutions has appeared on 15-7-2004 and also on 29-7-2004 when the review was heard. The petitioner, being a member of the said association, cannot complain or raise any objection now. Further, it was pointed out that it is only in pursuance of the said representation made through the Association, it was suggested to have a uniform fees structure and the third respondent had taken a decision.

Considering the submissions made on either side and the material on record, the short question that falls for consideration in this writ petition is as to whether the petitioner was denied of any proper opportunity in pursuance of the directions given by the Apex Court and as per the procedure initiated by third respondent itself.

Having regard to the aforesaid question, it is not necessary to go into the merits of the case or the correctness of the fees structure as determined by third respondent on 15-7-2004, as confirmed on 29-7-2004. Be that as it may, the fact remains that third respondent issued notice of hearing fixing the date as 15-7-2004 at 12.30 P.M. in the Office of the Committee at Hyderabad, vide letter dated 12-7-2004. Incidentally, the said letter was received by the petitioner on the afternoon of 15-7-2004. There is no serious dispute in regard to the service of notice on the petitioner in the afternoon of 15-7-2004. Normally, having given notice to all the persons concerned, in the absence of any acknowledgment, the enquiry could not have proceeded. Even for the subsequent date of hearing i.e., 29-7-2004, third respondent had given notice to other institutions, but not to the petitioner. There is no explanation as to why the petitioner was not given proper opportunity either on 15-7-2004 or even on the subsequent date of hearing i.e., on 29-7-2004. On the face of it, both the proceedings dated 15-7-2004 and 29-7-2004 are almost ex-parte and without providing any opportunity to the petitioner. On the principles laid down by the Apex Court in T.M.A. Pai Foundations's case (supra 1) and in view of the specific directions given by the Apex Court in Islamic Academy of Education case (supra 2) reiterating more on the individual approach to be made in respect of each institution for fees structure by taking into consideration various aspects, it cannot be said that the uniform approach as sought to be made by third respondent will be binding on all the institutions. The petitioner's case vis-à-vis his submission has to be considered on par with the other institutions. The fact remains that the petitioner's case remained unconsidered. In the circumstances, it has to be held that the entire procedure adopted by the respondents is in the teeth of the mandate of the principles of natural justice, apart from the procedure adopted on its own by the respondent No.3. Issuance of notice should have its logical end. Mere consideration of cases of others would not be valid answer. In view of the same, entire impugned proceedings are liable to be set aside.

The Apex Court in MANGILAL VS. STATE OF MADHYA PRADESH observed as follows:

> "Even if a statute is silent and there are no positive words in the Act or Rules made there under there could be nothing wrong in spelling

out the need to hear the parties affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every Tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on principles of natural justice irrespective of the extent of its application by express provision in that regard in given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See. **Swadesi Cotton Mills etc., vs. Union of India etc., AIR 1961 Supreme Court 818).** Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met and opportunity to explain."

Accordingly, the writ petition is allowed and the decisions taken by third respondent on 15-7-2004 as confirmed on 29-7-2004 are set aside. Third respondent is directed to issue fresh notice to the petitioner by fixing the date of hearing and consider the submissions made by all the concerned, take decision in accordance with law.

It is now submitted that in fact as per the notification issued by second respondent, counseling has already been started. It is made clear that second respondent is entitled to proceed with the said counseling and insist only the quantum of fee at the rate as determined as per the orders dated 15-7-2004 as a stop-gap measure with a specific intimation to each of the students appearing for counseling and by putting up on the Notice Board to the effect that any such demand would be subject to the final decision taken by third respondent in pursuance of the

directions given by this Court and on such re-determination of the quantum, the excess amount, if any, will have to be reimbursed by each of the individual. No costs.

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15—09—2004.

To

1. The Principal Secretary, Government of Andhra Pradesh, Health,

   Medical and Family Welfare Department, Secretariat, Hyderabad

2 The Registrar, NTR University of Health Sciences, Vijayawada

3 The Member Secretary & Principal Secretary to Government, Fees

Structure Committee, Health, Medical and Family Welfare

Department, 1st Floor (South wing) Gagan Vihar, M.J. Road,

Hyderabad-500 007

4. Two CCs to the Government Pleader for Medical Health and Family Welfare, High Court Building, Hyderabad. (OUT)

5. Two C.D. copies.

Stv/-

Note: Issue C.C. in two days.

(B.O)

C.M.